

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 514**

Introduced by Lautenbaugh, 18.

Read first time January 21, 2009

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to workers' compensation; to amend section  
2 48-128, Reissue Revised Statutes of Nebraska, and section  
3 48-121, Revised Statutes Cumulative Supplement, 2008; to  
4 change disability compensation provisions; to harmonize  
5 provisions; and to repeal the original sections.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 48-121, Revised Statutes Cumulative  
2 Supplement, 2008, is amended to read:

3           48-121 (1) The following schedule of compensation is  
4 hereby established for injuries resulting in disability:

5           ~~(1)~~ (a) For total disability, the compensation during  
6 such disability shall be sixty-six and two-thirds percent of the  
7 wages received at the time of injury, but such compensation shall  
8 not be more than the maximum weekly income benefit specified in  
9 section 48-121.01 nor less than the minimum weekly income benefit  
10 specified in section 48-121.01, except that if at the time of  
11 injury the employee receives wages of less than the minimum weekly  
12 income benefit specified in section 48-121.01, then he or she shall  
13 receive the full amount of such wages per week as compensation.  
14 Nothing in this subdivision shall require payment of compensation  
15 after disability shall cease;

16           ~~(2)~~ (b) For disability partial in character, except  
17 the particular cases mentioned in subdivision ~~(3)~~ (1)(c) of this  
18 section, the compensation shall be sixty-six and two-thirds percent  
19 of the difference between the wages received at the time of the  
20 injury and the earning power of the employee thereafter, but such  
21 compensation shall not be more than the maximum weekly income  
22 benefit specified in section 48-121.01. This compensation shall be  
23 paid during the period of such partial disability but not beyond  
24 three hundred weeks. Should total disability be followed by partial  
25 disability, the period of three hundred weeks mentioned in this

1 subdivision shall be reduced by the number of weeks during which  
2 compensation was paid for such total disability;

3           ~~(3)~~ (c) For disability resulting from permanent injury  
4 of the classes listed in this subdivision, the compensation shall  
5 be in addition to the amount paid for temporary disability, except  
6 that the compensation for temporary disability shall cease as  
7 soon as the extent of the permanent disability is ascertainable.  
8 For disability resulting from permanent injury of the following  
9 classes, compensation shall be: For the loss of a thumb, sixty-six  
10 and two-thirds percent of daily wages during sixty weeks. For the  
11 loss of a first finger, commonly called the index finger, sixty-six  
12 and two-thirds percent of daily wages during thirty-five weeks. For  
13 the loss of a second finger, sixty-six and two-thirds percent of  
14 daily wages during thirty weeks. For the loss of a third finger,  
15 sixty-six and two-thirds percent of daily wages during twenty  
16 weeks. For the loss of a fourth finger, commonly called the little  
17 finger, sixty-six and two-thirds percent of daily wages during  
18 fifteen weeks. The loss of the first phalange of the thumb or of  
19 any finger shall be considered to be equal to the loss of one-half  
20 of such thumb or finger and compensation shall be for one-half of  
21 the periods of time above specified, and the compensation for the  
22 loss of one-half of the first phalange shall be for one-fourth of  
23 the periods of time above specified. The loss of more than one  
24 phalange shall be considered as the loss of the entire finger or  
25 thumb, except that in no case shall the amount received for more

1 than one finger exceed the amount provided in this schedule for  
2 the loss of a hand. For the loss of a great toe, sixty-six and  
3 two-thirds percent of daily wages during thirty weeks. For the  
4 loss of one of the toes other than the great toe, sixty-six and  
5 two-thirds percent of daily wages during ten weeks. The loss of the  
6 first phalange of any toe shall be considered equal to the loss of  
7 one-half of such toe, and compensation shall be for one-half of the  
8 periods of time above specified. The loss of more than one phalange  
9 shall be considered as the loss of the entire toe. For the loss of  
10 a hand, sixty-six and two-thirds percent of daily wages during one  
11 hundred seventy-five weeks. For the loss of an arm, sixty-six and  
12 two-thirds percent of daily wages during two hundred twenty-five  
13 weeks. For the loss of a foot, sixty-six and two-thirds percent of  
14 daily wages during one hundred fifty weeks. For the loss of a leg,  
15 sixty-six and two-thirds percent of daily wages during two hundred  
16 fifteen weeks. For the loss of an eye, sixty-six and two-thirds  
17 percent of daily wages during one hundred twenty-five weeks. For  
18 the loss of an ear, sixty-six and two-thirds percent of daily  
19 wages during twenty-five weeks. For the loss of hearing in one ear,  
20 sixty-six and two-thirds percent of daily wages during fifty weeks.  
21 For the loss of the nose, sixty-six and two-thirds percent of daily  
22 wages during fifty weeks.

23           In any case in which there is a loss or loss of use  
24 of more than one member or parts of more than one member set  
25 forth in this subdivision, but not amounting to total and permanent

1 disability, compensation benefits shall be paid for the loss or  
2 loss of use of each such member or part thereof, with the periods  
3 of benefits to run consecutively. The total loss or permanent total  
4 loss of use of both hands, or both arms, or both feet, or both  
5 legs, or both eyes, or hearing in both ears, or of any two thereof,  
6 in one accident, shall constitute total and permanent disability  
7 and be compensated for according to subdivision ~~(1)~~ (1)(a) of  
8 this section. In all other cases involving a loss or loss of use  
9 of both hands, both arms, both feet, both legs, both eyes, or  
10 hearing in both ears, or of any two thereof, total and permanent  
11 disability shall be determined in accordance with the facts.  
12 Amputation between the elbow and the wrist shall be considered  
13 as the equivalent of the loss of a hand, and amputation between  
14 the knee and the ankle shall be considered as the equivalent of  
15 the loss of a foot. Amputation at or above the elbow shall be  
16 considered as the loss of an arm, and amputation at or above the  
17 knee shall be considered as the loss of a leg. Permanent total  
18 loss of the use of a finger, hand, arm, foot, leg, or eye shall  
19 be considered as the equivalent of the loss of such finger, hand,  
20 arm, foot, leg, or eye. In all cases involving a permanent partial  
21 loss of the use or function of any of the members mentioned in  
22 this subdivision, the compensation shall bear such relation to the  
23 amounts named in such subdivision as the disabilities bear to those  
24 produced by the injuries named therein.

25 If, in the compensation court's discretion, compensation

1 benefits payable for a loss or loss of use of more than one  
2 member or parts of more than one member set forth in this  
3 subdivision, resulting from the same accident or illness, do not  
4 adequately compensate the employee for such loss or loss of use  
5 and such loss or loss of use results in at least a thirty  
6 percent loss of earning capacity, the compensation court shall,  
7 upon request of the employee, determine the employee's loss of  
8 earning capacity consistent with the process for such determination  
9 under subdivision ~~(1)~~ or ~~(2)~~ (1)(a) or (1)(b) of this section, and  
10 in such a case the employee shall not be entitled to compensation  
11 under this subdivision.

12           If the employer and the employee are unable to agree upon  
13 the amount of compensation to be paid in cases not covered by the  
14 schedule, the amount of compensation shall be settled according  
15 to sections 48-173 to 48-185. Compensation under this subdivision  
16 shall not be more than the maximum weekly income benefit specified  
17 in section 48-121.01 nor less than the minimum weekly income  
18 benefit specified in section 48-121.01, except that if at the  
19 time of the injury the employee received wages of less than the  
20 minimum weekly income benefit specified in section 48-121.01, then  
21 he or she shall receive the full amount of such wages per week as  
22 compensation;

23           ~~(4)~~ (d) For disability resulting from permanent  
24 disability, if immediately prior to the accident the rate of wages  
25 was fixed by the day or hour, or by the output of the employee,

1 the weekly wages shall be taken to be computed upon the basis of a  
2 workweek of a minimum of five days, if the wages are paid by the  
3 day, or upon the basis of a workweek of a minimum of forty hours,  
4 if the wages are paid by the hour, or upon the basis of a workweek  
5 of a minimum of five days or forty hours, whichever results in  
6 the higher weekly wage, if the wages are based on the output of  
7 the employee; and

8 ~~(5)~~ (e) The employee shall be entitled to compensation  
9 from his or her employer for temporary disability while  
10 undergoing physical or medical rehabilitation and while undergoing  
11 vocational rehabilitation whether such vocational rehabilitation is  
12 voluntarily offered by the employer and accepted by the employee or  
13 is ordered by the Nebraska Workers' Compensation Court or any judge  
14 of the compensation court.

15 (2) All compensation payable pursuant to this section  
16 shall terminate on the date the employee qualifies for old age and  
17 survivor's insurance retirement benefits under the federal Social  
18 Security Act or two years after the employee's injury, whichever  
19 occurs last.

20 Sec. 2. Section 48-128, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22 48-128 (1) For injuries occurring before December 1,  
23 1997:

24 (a) If an employee who has a preexisting permanent  
25 partial disability whether from compensable injury or otherwise,

1 which is or is likely to be a hindrance or obstacle to his or  
2 her obtaining employment or obtaining reemployment if the employee  
3 should become unemployed and which was known to the employer prior  
4 to the occurrence of a subsequent compensable injury, receives  
5 a subsequent compensable injury resulting in additional permanent  
6 partial or in permanent total disability so that the degree or  
7 percentage of disability caused by the combined disabilities is  
8 substantially greater than that which would have resulted from  
9 the last injury, considered alone and of itself, and if the  
10 employee is entitled to receive compensation on the basis of the  
11 combined disabilities, the employer at the time of the last injury  
12 shall be liable only for the degree or percentage of disability  
13 which would have resulted from the last injury had there been  
14 no preexisting disability. For the additional disability, the  
15 employee shall be compensated out of the Workers' Compensation  
16 Trust Fund. If the subsequent compensable injury of such an  
17 employee shall result in the death of the employee and it shall  
18 be determined that the death would not have occurred except for  
19 such preexisting permanent partial disability, the employer shall  
20 pay the compensation benefits prescribed by this subsection for a  
21 period not exceeding three hundred twenty-five weeks, and for any  
22 compensation benefits payable after such period of three hundred  
23 twenty-five weeks, the dependents shall be compensated out of the  
24 fund.

25 (b) In order to qualify under this subsection, the

1 employer must establish by written records that the employer had  
2 knowledge of the preexisting permanent partial disability at the  
3 time that the employee was hired or at the time the employee was  
4 retained in employment after the employer acquired such knowledge.

5 (c) As used in this subsection, preexisting permanent  
6 partial disability shall mean any preexisting permanent condition,  
7 whether congenital or the result of injury or disease, of such  
8 seriousness as to constitute a hindrance or obstacle to obtaining  
9 employment or to obtaining reemployment if the employee should  
10 become unemployed. No condition shall be considered a preexisting  
11 permanent partial disability under this subsection unless it would  
12 support a rating of twenty-five percent loss of earning power or  
13 more or support a rating which would result in compensation payable  
14 for a period of ninety weeks or more for disability for permanent  
15 injury as computed under subdivision ~~(3)~~ (1)(c) of section 48-121.

16 (2) Any money in the Second Injury Fund on July 1, 2000,  
17 shall be transferred to the Workers' Compensation Trust Fund.

18 Sec. 3. Original section 48-128, Reissue Revised Statutes  
19 of Nebraska, and section 48-121, Revised Statutes Cumulative  
20 Supplement, 2008, are repealed.